IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 301 of 2004

ST.901/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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PETITIONERS/ACCUSED NOS. 1, 2, 4, 5 & 6:

1. SANTHOSH, S/O.KESAVAN,
   CHAKKASSERIYIL HOUSE,
   IDIVANNA, AKAMPADAM,
   MALAPPURAM DISTRICT.

2. VILASINI, D/O.KESAVAN, DO. DO.

3. CHANDRAN, S/O.KESAVAN, DO. DO.

4. VIJAYAN, S/O.KESAVAN, DO. DO.

5. SAROJINI, W/O.KESAVAN, DO. DO.

BY ADV. SRI.BABU S. NAIR
SRI.MELBIN MATHEW

RESPONDENT/STATE:

THE STATE OF KERALA REP. BY THE SUB INSPECTOR OF POLICE, NILAMBUR POLICE STATION, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI -31.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 301 of 2004

ORDER

The petitioners are accused in S.T.No.901/00 on the file of the Judicial First Class Magistrate's Court, Nilambur. The learned Magistrate forwarded Annexure-A complaint for investigation and report under Section 156(3) Cr.P.C. to the Station House Officer, Nilambur Police Station. On the basis thereof Annexure B FIR was drawn up, registering the case as Crime No.377/97 of Nilambur Police Station. After investigation, final report was filed charge sheeting the accused for offences under Sections 448 and 323 IPC read with Section 34 thereof. The final report was being filed in court on 31.1.2000 and the learned Magistrate took cognizance of the offence on 5.2.2000.

2. It is the case of the petitioners that cognizance of the offences was taken by the learned Magistrate long after the period of limitation without notice to the petitioners and there was no

explanation also for the delay from the side of the prosecution and therefore, the cognizance taken is illegal and the entire proceedings in S.T.No.901/00 aforesaid has to be quashed, in the circumstances.

3. In view of the contentions raised, lower court records were got down as per the order of this Court dated 17.7.2007. It is seen from the original final report filed before the court by the Investigating Agency on 31.1.2000 that the offences involved are punishable under sections 448 and 323 IPC read with Section 34 thereof; that the learned Magistrate has taken cognizance of the offences on 5.2.2000; that the prosecution had not sought for condonation of delay in filing the final report and that the court was taking cognizance of the offences without applying its mind to the fact that the final report was time barred. The records showed that the evidence in the case began to be recorded on 30.10.2002 and that additional accused Nos.3 to 6 were impleaded invoking Section 319 of

the Cr.P.C., vide order dated 10.7.2003. However, the learned Magistrate has not taken cognizance of any offence under Section 324 IPC, as alleged by the petitioners. The result is that the offences alleged against the petitioners are punishable under Sections 448 and 323 IPC read with Section 34 thereof. The offence under Section 448 IPC is punishable with imprisonment for one year or with fine of Rs.1,000/- or both. Similar is the punishment for offence under Section 323 as well. Consequently, the period of limitation, within which, cognizance of the offence has to be taken by the Magistrate under Section 468(2)(b) of the Cr.P.C., is only one year.

4. In the instant case, occurrence has taken place on 12.6.1997 and the learned Magistrate has taken cognizance of the offences only on 5.2.2000, after more than 2½ years. The prosecution has also not explained the delay. However, it is seen that the petitioners have not impleaded the defacto

complainant, who is the person aggrieved and it is inappropriate to quash the proceedings without notice to him.

5. In the circumstances, I quash the order of the learned Magistrate taking cognizance of the offences under Sections 448 and 323 IPC read with Section 34 thereof on 5.2.2000 and remit the matter back to the learned Magistrate, enabling the prosecution to explain the delay, if any, with notice to the defacto complainant. The prosecution shall be at liberty to invoke the benefit of exclusion of time, if any, available and also to pray for extension of the period of limitation and if the learned Magistrate is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice, he may take cognizance of the offences, extending the period of limitation invoking Sections 473 of the Cr.P.C. However, an order in that behalf shall be passed by

the learned Magistrate only with notice to the defacto complainant. If the learned Magistrate is satisfied that there are no such circumstances to condone the delay or if he feels that it is not necessary in the interest of justice to grant extension of period of limitation, he shall reject the final report, refusing to condone the delay.

With these directions, this Crl.M.C. is disposed of.

6th August, 2007 (K.P.Balachandran, Judge)

tkv